

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:NER:OHI:CIN:TL-N-5379-99  
SJNeubeck

date: OCT 08 1999

to: Chief, Quality Measurement Branch, Ohio District  
Attn: Kelly Nagel, Interest Abatement Coordinator

from: District Counsel, Ohio District

subject:

[REDACTED]  
Interest on Refunds Computation

This is in response to your request for an opinion regarding the interpretation of IRM 31(59)4.5 with respect to the 45-day holdback period prescribed by I.R.C. § 6611(e).

ISSUE

Whether the taxpayer's refund should bear interest without respect to the 45-day interest-free period prescribed by I.R.C. § 6611(e)(3), where the decrease in tax occurred as a result of both a claim and Service initiated adjustments.

CONCLUSION

Where a refund is attributable in part to a taxpayer's claim for refund and in part to an adjustment initiated by the Service, that portion of the refund attributable to the IRS initiated adjustment is subject to the 45-day holdback period prescribed by I.R.C. § 6611(e)(3).

DISCUSSION

Specific facts concerning the specific adjustments, the bases for the taxpayer's refund claim, and the amounts attributable to each were not provided in your request. Nevertheless, it seems clear from your memorandum to us and the taxpayer's letter attached thereto, that a refund for each tax year consisted of two components: (1) items set forth in the taxpayer's claim for refund and; (2) items examined by the Service on its own initiative. In its [REDACTED],

correspondence to the Cincinnati Service Center, the taxpayer asserts, "The Internal Revenue Manual for interest states that if ANY amount of the tax adjustment involves an amended return it IS NOT an IRS initiated adjustment." (Emphasis in original.) The taxpayer misinterprets the manual.

Subsection 3 of IRM 31(59)4.5 provides the definition "IRS initiated adjustment" upon which the taxpayer's claim rests.

The definition of "IRS Initiated Adjustment" is as follows: Anytime an amended return/claim (filed on or after January 1, 1995) is involved in a refund adjustment being made, process the adjustment utilizing procedures under the amendment return/claim aspect of OBRA 1993. If the adjustment DOES NOT involve an amended return/claim and IS NOT the original or delinquent return processing action(s), e.g., unallowables, math errors, EIC project, etc., process the refund as "IRS INITIATED". (sic) (Emphases in original.)

We read the above provision as ambiguous on the issue. Significant Service Center Advice has been issued on the subject, interpreting the matter in a manner consistent with the congressional intent. 1998 SCA LEXIS 110; SCA 199917002. Section 13271 of the Revenue Reconciliation Act of 1993 (OBRA) sought to provide parallel rules applicable to all tax refunds whether arising from an original tax return, an amended return or claim for refund, or a Service-initiated adjustment. ISSUE 2 within the SCA discusses the situation where a taxpayer files a refund claim for \$1,000.00, and the Service determines that the taxpayer is entitled to a \$1,700.00 refund, i.e., in an amount \$700.00 greater than the amount claimed. The SCA provides that applying either section 6611(e)(1) or section 6611(e)(3) would be improper, and that each section should be applied in part. In the example, \$700.00 would be treated as a Service-initiated adjustment.

Although we do not have the precise facts on which the taxpayer's claim is based, the claim appears to be governed by the SCA. The SCA does not distinguish between a claim being in an understated amount due to a math error or to an erroneous interpretation of law, e.g., the depreciable life of an asset. The partial application of each subsection of § 6611 appears particularly warranted where the refund is predicated on an issue not raised by the taxpayer in its claim. If you would like a fact-specific opinion, please provide us with the necessary data at your convenience.

Parenthetically, we note that we consulted with our National Office concerning the ambiguity of the Manual section at issue. That Office agrees that the taxpayer's interpretation is possible. Accordingly, it suggests that, if the Service encounters substantial correspondence from taxpayers on this issue, the individuals responsible for drafting and editing this Manual section be contacted to revise the Manual and eliminate the problem.

If you have any questions, please contact the undersigned at 684-6151.

ROBERT D. KAISER  
Acting Asst. District Counsel

(signed) STEPHEN J. NEUBECK

By:

---

STEPHEN J. NEUBECK  
Senior Attorney